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**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: HMO - 175870

PRELIMINARY RECITALS

Pursuant to a petition filed July 26, 2016, under Wis. Stat., §49.45(5)(a), to review a decision by the United Healthcare HMO to deny Medical Assistance (MA) services, a hearing was held on September 1, 2016, by telephone.

The issue for determination is whether the agency correctly denied personal care worker (PCW) services.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

;

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: Dr. [REDACTED]
United Healthcare
10701 W. Research Drive
Wauwatosa, WI 53226-3452

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County who receives MA.
2. Petitioner became a member of the United Healthcare HMO effective January 1, 2016. She previously was in a different HMO. United initially kept in place the services provided under the former HMO for 60 days (and eventually for over five months) while United staff reassessed petitioner's care needs.

3. Under the former HMO petitioner received 3.75 hours per day PCW services. In March, 2016 petitioner's home health care provider submitted a personal care screening tool that showed a need for four hours per day PCW services. After reviewing the screen and petitioner's medical records the United team denied the request for ongoing PCW services. By a notice dated May 31, 2016 the agency informed petitioner that authorization for PCW services would be discontinued effective June 10, 2016. Petitioner sought a grievance review, but the review committee upheld the action by a notice dated June 30, 2016.
4. Petitioner is 55 years old. She has chronic obstructive pulmonary disease (COPD), osteoarthritis, hypertension, and depression.
5. In a home visit with petitioner in February, 2016 the United Healthcare case manager noted that petitioner ambulated without assistance, went up and down stairs easily and quickly (but was short of breath at the top of the stairs which she remedied quickly with her inhaler). She transferred up and down off her couch multiple times, and showed a full range of motion with her arms. She reported having a shower chair, grab bar, and long handle brush in her shower. Petitioner demonstrated how she used the brush for her back. Petitioner said that she dressed independently, was able to groom herself, toileted herself, and handled her own medications.
6. The United staff also reviewed medical records, including the record after petitioner went to the hospital in June, 2016. The record did not show that petitioner had a stroke (as petitioner claimed), and no special orders were given by the doctor after the visit.
7. After petitioner appealed a consultant with the Department's Division of Health Care Access and Accountability (DHCAA) reviewed the file and affirmed the denial of PCW services.

DISCUSSION

Under the discretion allowed by Wis. Stat., §49.45(9), the Department now requires MA recipients to participate in HMOs. Wis. Admin. Code, §DHS 104.05(2)(a). MA recipients enrolled in HMOs must receive medical services from the HMOs' providers, except for referrals or emergencies. Admin. Code, §DHS 104.05(3).

The criteria for approval by a managed care program contracted with the DHCAA are the same as the general MA criteria. See Admin. Code, §DHS 104.05(3), which states that HMO enrollees shall obtain services "paid for by MA" from the HMO's providers. The department must contract with the HMO concerning the specifics of the plan and coverage. Admin. Code, §DHS 104.05(1).

If the enrollee disagrees with any aspect of service delivery provided or arranged by the HMO, the recipient may file a grievance with the department or appeal to the Division of Hearings and Appeals. Just as with regular MA, when the department denies a grievance from an HMO recipient, the recipient can appeal the department's denial within 45 days. Wis. Stat., §49.45(5); Admin. Code, §DHS 104.01(5)(a)3.

Personal care services are "medically oriented activities related to assisting a recipient with activities of daily living necessary to maintain the recipient in his or her place of residence in the community." Wis. Admin. Code §DHS 107.112(1)(a). Covered services include the following:

1. Assistance with bathing;
2. Assistance with getting in and out of bed;
3. Teeth, mouth, denture and hair care;
4. Assistance with mobility and ambulation including use of walker, cane or crutches;
5. Changing the recipient's bed and laundering the bed linens and the recipient's personal clothing;
6. Skin care excluding wound care;

7. Care of eyeglasses and hearing aids;
8. Assistance with dressing and undressing;
9. Toileting, including use and care of bedpan, urinal, commode or toilet;
10. Light cleaning in essential areas of the home used during personal care service activities;
11. Meal preparation, food purchasing and meal serving;
12. Simple transfers including bed to chair or wheelchair and reverse; and
13. Accompanying the recipient to obtain medical diagnosis and treatment.

Wis. Admin. Code, §DHS 107.112(b).

In this case the United Healthcare team determined that PCW services for petitioner were not medically necessary. The decision was based upon the visit by the case manager and a review of petitioner's medical records. During the visit petitioner evidenced an ability to perform her own daily cares, and medical records supported that finding. During the hearing I asked petitioner what services her personal care worker, who is petitioner's daughter, provided, and petitioner stated first that she cooks, shops, and cleans. All of those are considered to be incidental services, not direct, hands-on personal cares. Petitioner also said that her daughter helps her bathe, but the record does not support the need for such assistance. Given that the care worker primarily performs incidental services, it follows that the United Healthcare assessment of the need for PCW services was accurate.

I note that the agency now is doing another evaluation and physical therapy report. I am reviewing the denial based upon the evidence before me. If the new evaluation calls for PCW services, the agency will take action to provide them.

CONCLUSIONS OF LAW

The HMO correctly denied PCW services for petitioner because she showed the ability to perform her own activities of daily living.

THEREFORE, it is

ORDERED

That the petition for review is hereby dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 8th day of September, 2016

\s _____
Brian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on September 8, 2016.

Division of Health Care Access and Accountability